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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,736	10/10/2001	Masahiro Asano	ASAN3001/EM/7306	5753

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EXAMINER

TIEU, BINH KIEN

ART UNIT PAPER NUMBER

2643

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/973,736	Applicant(s) ASANO, MASAHIRO	
	Examiner BINH K. TIEU	Art Unit 2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Quigley et al.

(U.S. Pat. #: 6,650,624).

Regarding claim 1, Quigley et al. ("Quigley") teaches a transceiver, such as one shown in figures 2, 6B, 27, 34, etc., comprising:

a transmission channel condition evaluator for evaluating a transmission channel condition based on a signal received from a transmitter-receiver (col.3, lines 7-15; col.36, lines 39-51; col.38, lines 34-49); and

a modulation method selector for determining a modulation method to be used in transmitting a signal to the transmitter-receiver based on the evaluated transmission channel condition (col.37, line 62 – col.38, line 33) and a difference between transmission power (i.e., power level) of the transceiver and that of the transmitter-receiver (col.29, line 18 – col.30, line 54; col.31, lines 40-56).

Regarding claim 2, note col.24, lines 3-13.

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Regarding claim 3, note col.40, lines 16-23.

Regarding claim 4, note col.40, lines 33-55.

Regarding claim 5, note figures 78 and 79; col.70, line 61 – col.71, line 15.

Regarding claim 6, see the rejection of claim 2 above.

Regarding claims 7 and 8, see the rejection of claim 3 above.

### *Conclusion*

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Although the Gfeller et al. (US. Pat. #: 6,643,469) and Larsen et al. (US. Pat. #: 6,097,703) are not applied into this Office Action, they are also called to Applicants attention. They may be used in future Office Action(s). Both these references are also concerned with a transceiver comprising a selector for selecting modulation method and for determining power level of transceived signals, and an evaluator for evaluating channel condition. Combination of Gfeller and Larsen also teaches other features related to modulation, power level measurements and determination of channel conditions.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Binh K. Tieu whose telephone number is (703) 305-3963 and E-mail address: [BINH.TIEU@USPTO.GOV](mailto:BINH.TIEU@USPTO.GOV).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Curtis Kuntz, can be reached on (703) 305-4708 and **IF PAPER HAS BEEN**

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Or faxed to:

(703) 872-9314

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington VA, Sixth Floor (Receptionist, tel. No. 703-305-4700).

A handwritten signature in black ink, appearing to read 'Binh Tieu', with a long horizontal line extending to the right.

**BINH TIEU  
PRIMARY EXAMINER**

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Date: September 08, 2004